

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19337 of 2013.

Date of Decision:-23.05.2017.

Mantosh Kumar

.....Petitioner

Versus

Principal Medical Officer, Government Medical Specialty Hospital, Sector
16, Chandigarh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Kunal Mulwani, Advocate for the petitioner.

Mr. Suvir Sehgal, Sr. Standing counsel for
U.T. Administration for respondent No.1.

Mr. Rohit Kapoor, Advocate for respondent No.2.

P.B. BAJANTHRI, J. (Oral)

1.) Petitioner has questioned the validity of communication dated 8.8.2013 (Annexure P-10) and further sought for a direction to the second respondent to permit him to join on the post of Chowkidar (Class-IV) pursuant to the offer of appointment dated 12.3.2013 (Annexure P-2). Second respondent advertised for the post of Chowkidar on 29.04.2012. The petitioner is a candidate who has been selected and appointed on 12.3.2013. Offer of appointment was issued on 12.3.2013. One of the condition in the offer of appointment is that petitioner was required to join duties within a week from the date of receipt of offer of appointment vide

letter dated 12.3.2013 failing which petitioner's name shall be struck off

from the select list and the next candidate shall be called for appointment.

2.) Learned counsel for the petitioner submitted that petitioner has not been issued certificate of physical fitness by the competent authority, namely, Principal Medical Officer, Government Medical Specialty Hospital, Sector 16, Chandigarh. Instead of issuing medical certificate to the petitioner, Principal Medical Officer goes on corresponding with the second respondent by pointing one or the other clarification. Such a correspondence went on upto 6.6.2013. Thereafter, petitioner was given medical certificate on 11.7.2013. With reference to medical certificate dated 11.7.2013, second respondent has rejected petitioner's claim without assigning any reason. Hence, this petition. Learned counsel for the petitioner further submitted that from the records, it is evident that the petitioner's claim has been rejected on the ground of violation of condition No.8 in the offer of appointment to the extent that the petitioner failed to join duties within a week. It was submitted that within a week petitioner had approached the Principal Medical Officer, Government Medical Specialty Hospital, Sector 16, Chandigarh. Instead of issuing medical certificate unnecessary correspondence was going on between the second respondent and the Principal Medical Officer relating to issuance of medical certificate to the petitioner. Therefore, there is no delay on the part of petitioner so as to deny appointment. Hence, petitioner is entitled for appointment to the post of Chowkidar (Class-IV) pursuant to the offer of appointment dated 12.3.2013.

3.) Per contra learned counsel for the second respondent vehemently contended that petitioner has not complied condition Nos.7 and

within a period of one week. It was further submitted that having regard to the petitioner's physical fitness relating to eye and he had squint eyes due to which he is not entitled to selection and appointment to the post of Chowkidar (Class-IV) in view of the conditions imposed in the medical book maintained by the Medical Board of the Central Government. Thus, petitioner is not entitled for selection and appointment to the post of Chowkidar (Class-IV).

4.) Learned counsel for the first respondent submitted that in terms of the medical certificate read with the medical book, petitioner is not entitled for Chowkidar and Class-IV post. Therefore, second respondent has rightly refused to accept the petitioner's joining report.

5.) Heard learned counsel for the parties.

6.) Crux of the matter in the present case is (i) whether there is a delay on the part of petitioner in not complying condition Nos.7 and 8 in the offer of appointment dated 12.3.2013 or not; (ii) whether the petitioner's physical standards are required to be taken into consideration with reference to Central Government medical book or not. Perusal of the offer of appointment dated 12.3.2013 read with the communications between the Principal Medical Officer and the second respondent dated 05.04.2013, 10.04.2013, 01.05.2013, 23.05.2013 and 06.06.2013 in relation to issuance of medical certificate to the petitioner, it is evident that there is protracted correspondence between the second respondent and the Principal Medical Officer, Government Medical Specialty Hospital, Sector 16, Chandigarh. Therefore, there is no delay on the part of petitioner in obtaining the medical certificate. Medical certificate was issued after protracted

Officer on 11.7.2013. Consequently, petitioner approached the second respondent seeking for implementation of offer of appointment. The same has been rejected on the score that petitioner has failed to comply condition Nos.7 and 8. It is untenable. Having regard to the dates and events there is no lapse on the petitioner's part. Hence, there is no delay in complying the conditions stated in the offer of appointment dated 12.3.2013.

7.) Second respondent while issuing advertisement for the post of Chowkidar (Class-IV) has not communicated or revealed any medical standard for the candidates. Therefore, the contention of second respondent that petitioner had squint eyes and he is unfit to hold the post of Chowkidar (Class-IV) with reference to medical book issued by the Central Government is afterthought and it is arbitrary. Such a stand has been taken by the second respondent only in this petition and not before the advertisement and it was during the midst of process of recruitment. Supreme Court in the case of *K. Manjusree Vs. State of Andhra Pradesh* reported in *(2008) 3 SCC 512* held that once the process of selection has been started, one cannot incorporate or modify the process of selection in the middle. Contention of the second respondent's counsel that petitioner do not fulfill the physical standard with reference to Central Government medical book is nothing but incorporating such a clause in the midst of the process of selection. Thus, second respondent's contention that the petitioner do not fulfill the physical standard is hereby rejected. In view of these facts and circumstances, the second respondent is hereby directed to consider petitioner's name for appointment to the post of Chowkidar (Class-IV) on contract basis at par with the persons who are appointed pursuant to

appointed on contract basis for 89 days in the year 2013 pursuant to the advertisement dated 29.4.2012 are being continued even to this day. Therefore, the petitioner be appointed within a period of 2 months from the receipt of certified copy of this order. At this stage, learned counsel for the second respondent submitted that only 17 posts of Chwokidar are available and no vacancy is available to accommodate the petitioner. In view of the said submission, the second respondent is hereby directed to create a supernumerary post in order to issue order of appointment to the petitioner. Issuance of order of appointment would be on notional basis.

8.) With the above observations, petition stands allowed.

(P.B. BAJANTHRI)
JUDGE

May 23, 2017.
sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.